

CITY OF LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S. Special Permit #1973A

DATE: November 26, 2002

SCHEDULED PLANNING COMMISSION HEARING: December 11, 2002

PROPOSAL Three Eagles of Lincoln on behalf of KFOR Radio is requesting a waiver of fall zone from 50' to 20' for a 100' tall broadcast tower designed to accommodate antennas for the operation of the radio station.

LAND AREA: Approximately 1.15 acres.

CONCLUSION: Given the 50' easement that was retained on the adjoining property, this request complies with the intent of the Wireless Ordinance and the provision for a fall zone.

RECOMMENDATION:	Conditional Approval
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GENERAL INFORMATION

LEGAL DESCRIPTION: Lot 3, Reller Addition; and Lot 102 I.T., Section 7, T10N, R7E, Lancaster County, Nebraska.

LOCATION: 3800 Cornhusker Highway

**OWNER/
APPLICANT:** Three Eagles of Lincoln
6900 Van Dorn Street Suite 11
Lincoln, NE 68506 (402)483-5100

CONTACT: Donald Bowman
1045 Lincoln Mall Suite 100
Lincoln, NE 68508 (402)476-8005

EXISTING ZONING: H-3 Highway Commercial District

EXISTING LAND USE: Radio Station

SURROUNDING LAND USE AND ZONING:

North	Mobile Home Park	H-3, I-1
South	BNSF Railroad	I-1
East	Retail/Restaurant	H-3
West	Auto Repair	H-3

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates this area along the Cornhusker Highway corridor as commercial, bounded on the north and south by industrial.

ASSOCIATED APPLICATIONS: AA #02094 - Submitted November 14, 2002, an administrative amendment to delete Lot 2 from the area of Special Permit #1973 is being reviewed in conjunction with this request for a waiver to the fall zone.

AFP#02078 - An administrative final plat to move the west property line of Lot 102 west 50'. This plat was submitted on October 31, 2002 and the Director's Letter noting corrections and deficiencies to be addressed was sent November 15, 2002

HISTORY: Special Permit #1973 - Approved May 15, 2002, to allow a 100' broadcast tower designed to accommodate antennas for the operation of KFOR radio station.

OVERVIEW: KFOR Radio is proposing to move their studio to this site, formerly home of the VFW Club, and has an approved special permit to erect a 100' broadcast tower. Programming will be received via ground-based satellite dish antennas and rebroadcast to sister stations from antennas located on the tower.

The property included in that special permit included Lot 2, Reller First Addition, Lot 3, Reller Addition, and Lot 102 I.T., all totaling more than 2.6 acres. Since the approval of that permit, Lot 2, Reller First Addition was sold. Deleting this tract requires an administrative amendment to the special permit to show a revised site plan less Lot 2, and a waiver to the fall zone as the tower is now 20' from the west property line of Lot 102.

ANALYSIS

1. The building encroaches 3' over the lot line between Lot 2 and Lot 102, and the facilities on the site were considered a common development over the three lots involved. As a result, a waiver to the fall zone was not needed because the west property line of Lot 2 was approximately 300' away.
2. After the sale of Lot 2, the three lots could no longer be considered all part of a common development. The foundation of the tower is now situated approximately 20' from the west property line of Lot 102, 30' less than the required 50' fall zone.
3. The intent of the fall zone provision is to ensure that towers are sited a safe distance from surrounding properties to minimize potential hazards caused by either a tower collapse or from falling debris (attachments, ice, etc.).
4. A 50' wide perpetual easement over that portion of Lot 2 adjacent to Lot 102 was reserved by the seller. The easement states that it is for all purposes, and was at least partly intended to accommodate the encroachments by the building and the landscape screen for the tower.
5. The easement provides a fall zone area in excess of the 50' required, and there are no structures located within the easement. Given that the easement is perpetual and will presumably be in place as long as the building stands, little additional risk to future development on Lot 2 is posed by granting this waiver to the fall zone.

CONDITIONS

1. Site Specific:
 - 1.1 This approval authorizes a waiver to fall zone from 50' to 20' for the 100' broadcast tower approved by Special Permit 1973 consistent with the site plan submitted.

2. General

2.1 The 50' easement over Lot 2, Reller 1st Addition shall be provided for the life of the tower, as shown on the plans.

2. Standard:

2.1 The following conditions are applicable to all requests:

2.1.1 Before operating this broadcast tower, all development and construction is to comply with the approved plans.

2.1.2 The facility shall comply at all times with the current applicable FCC and FAA standards and regulations, and any of those of other agencies of the federal government with authority to regulate towers and antennas.

2.1.3 All privately-owned improvements, including landscaping, are to be permanently maintained by the owner.

2.1.4 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

2.1.5 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

2.1.6 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

3. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Brian Will, AICP
Planner

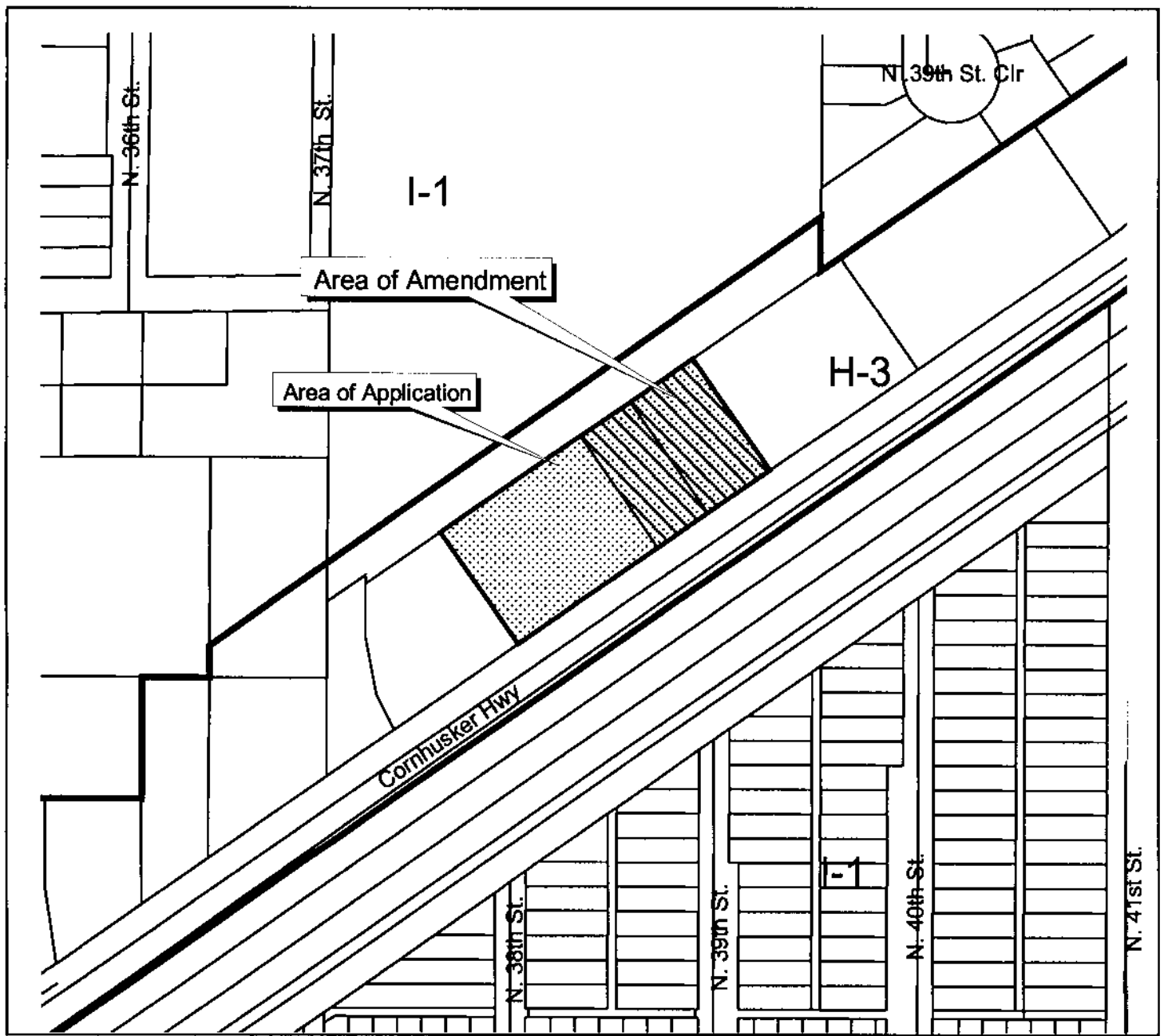


Special Permit #1973A
3800 Cornhusker Hwy.



Photograph Date: 1999

Lincoln City - Lancaster County Planning Dept.

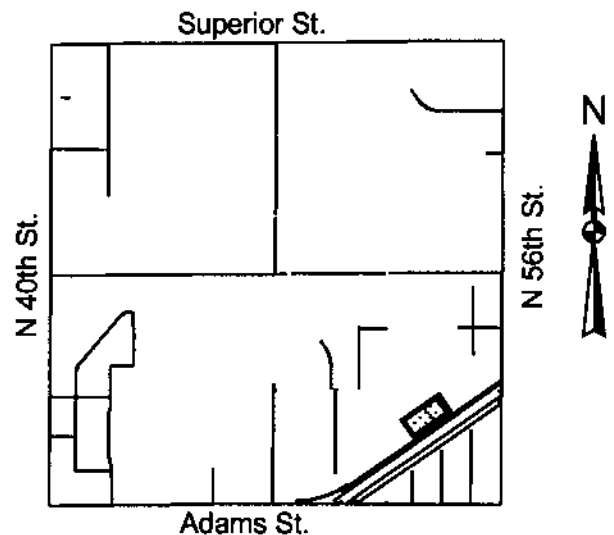
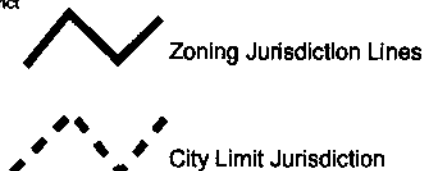


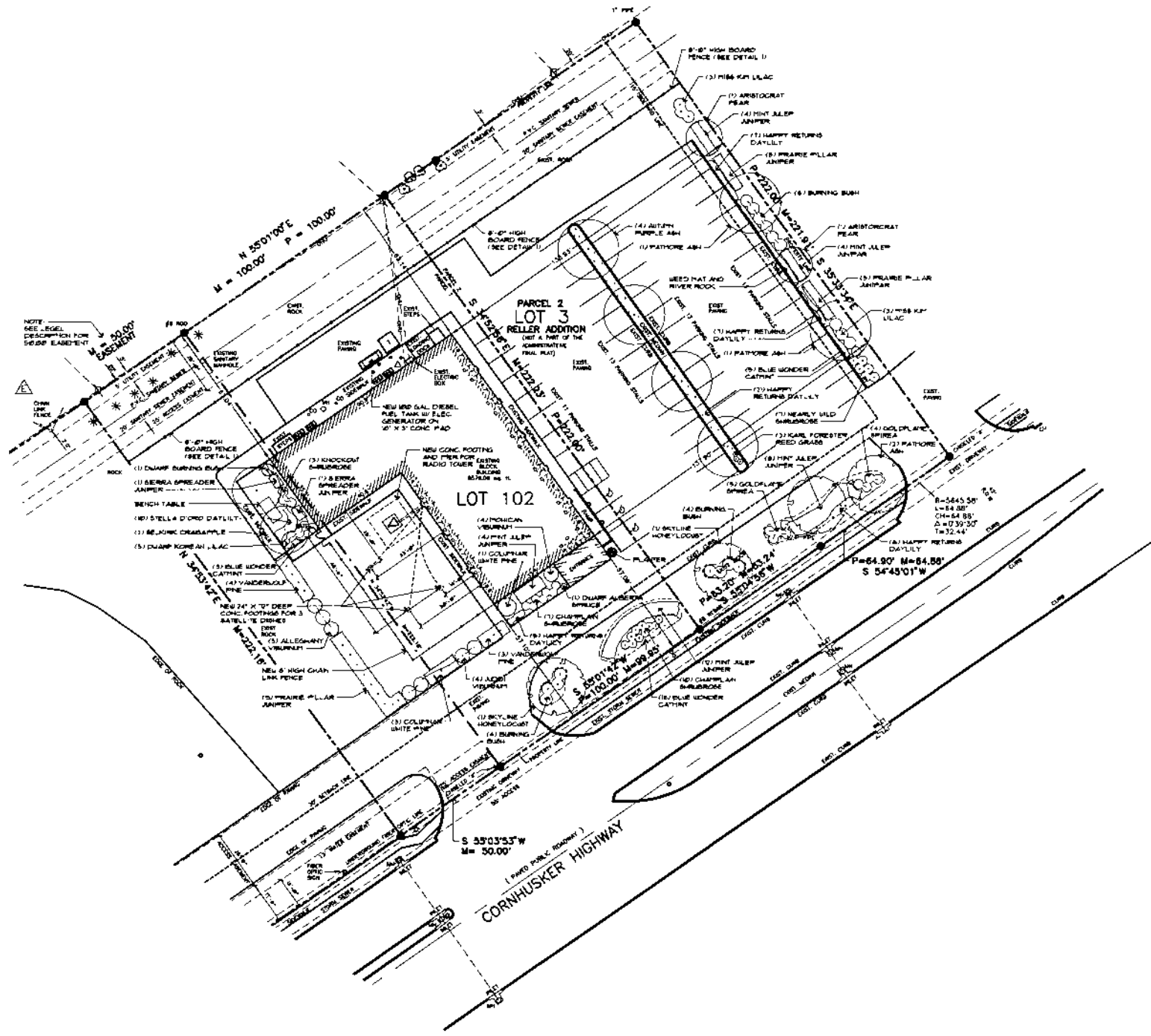
Special Permit #1973A 3800 Cornhusker Hwy.

Zoning:

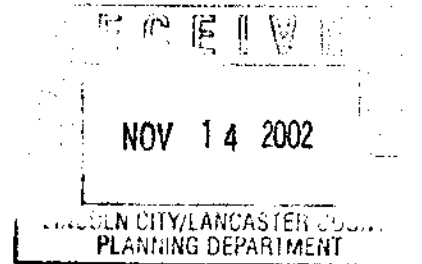
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 7 T10N R7E





BOWMAN & KRIEGER
ATTORNEYS AT LAW
1045 LINCOLN MALL - SUITE 100
LINCOLN, NEBRASKA 68508
(402) 476-8005



DONALD H. BOWMAN
MARK J. KRIEGER
CHAD L. BOWMAN
DAVID K. LUCAS

FAX (402) 476-8235

November 14, 2002

Mr. Brian J. Will, AICP
Lincoln-Lancaster County Planning Dept.
555 South 10th Street
Suite 213
Lincoln, NE 68508

RE: Three Eagles of Lincoln, Inc.
Special Permit No. 1973

Dear Brian:

Please accept this letter as a request on behalf of Three Eagles of Lincoln, Inc. for an Administrative Amendment to Special Permit No. 1973. The purpose of the proposed Amendment is to change the legal description of the property described in said Special Permit 1973. Three Eagles of Lincoln, Inc. proposes that the Special Permit be amended so that the legal description covered by the Permit is as follows:

All of Lot Three (3), Reller Addition and all of Lot One Hundred Two (102) Irregular Tract, Reller 1st Addition, all located in the Southwest Quarter (SW¹/₄) of Section Seven (7), Township Ten North (10N), Range Seven East (7E) of the 6th P.M., Lancaster County, Nebraska.

I am enclosing with this request six copies of the revised Site Plan which shows all of the improvements thereon, including the building and tower, as well as the previously approved landscape design. Please note that the Site Plan also shows the 50-foot easement on a portion of Lot 2, Reller 1st Addition, for information purposes and to accurately reflect the landscape design.

Second, we are hereby requesting a waiver of the fall zone requirement for the subject tower. It is our understanding that the fall zone requirement is to be one-half the distance of the height of the tower from the lot line of the property. Three Eagles has recently sold the adjoining property (Lot 2) and does

Mr. Brian J. Will, AICP
November 14, 2002
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not have ownership of sufficient property to meet the fall zone requirement. However, as you can see from the Site Plan, in addition to the legal address of the property, the applicant has an additional 50' easement bordering the property. Although this does not meet the technical requirements of the Code, it does provide additional space even though in the form of an easement. We are therefore requesting a waiver of the fall zone for this tower.

I am also enclosing a check in the amount of \$200.00 representing the filing fee of \$100.00 for the Administrative Amendment and \$100.00 for the request for a waiver of the fall zone requirement.

If anything further is needed to process this request, please let me know. Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don Bowman", written over a horizontal line.

Donald H. Bowman

DHB:cas
Enclosures

0202010

*Don J. Holtz***\$20.50**

REGISTER OF DEEDS

INST NO 2002

2002 AUG 19 P 1:48

054873

LANCASTER COUNTY, NE

EASEMENT

BLOCK
 NO
 COOK
 RELLER
 CHECKED
 ENTERED
 EDITED

This indenture is executed this 15th day of August, 2002, between **CHCO Partnership, a Nebraska General Partnership ("GRANTOR")**, and **Three Eagles of Lincoln, Inc., a Nebraska Corporation ("GRANTEE")**.

W I T N E S S E T H:

WHEREAS, Grantor is the owner of the following described real estate situated in Lancaster County, Nebraska, and referred to herein as "LOT 2":

Lot 2, Reller First Addition, Lancaster County, Nebraska.

WHEREAS, Grantee is the owner of the following described real estate situated in Lancaster County, referred to herein as "LOT 102":

Lot 102, Irregular Tracts, in the Southeast Quarter of Section 7, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

WHEREAS, the eastern boundary of Lot 2 is adjacent to and also forms the western boundary of Lot 102; and

WHEREAS, a portion of the building located on Lot 102 and improvements associated therewith extend over onto Lot 2, and Grantee uses and needs a portion of Lot 2 for proper use of and access to Lot 102; and

WHEREAS, Grantee desires to obtain a perpetual easement covering the East 50 Feet of Lot 2 to be used for all purposes associated with the use of Lot 102, and Grantor is willing to grant said easement to Grantee in consideration of the purchase of Lot 2 from Grantee, and as a part of said transaction.

NOW, THEREFORE, in consideration of the premises and in consideration of Grantee's sale of Lot 2 to Grantor and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants unto Grantee, its successors and assigns, a permanent and perpetual easement over and across the following described portion of Lot 2, depicted in Exhibit "A" attached hereto:

That part of Lot Two (2), Roller 1st Addition, Lancaster County, Nebraska more particularly described as follows:

Beginning at the East most corner of said Lot 2; thence on the Southeasterly Line of said Lot 2 and the Northerly Right of Way Line of Cornhusker Highway, on an assigned bearing of S55°03'53"W a distance of 50.00'; thence Northwesterly, N34°53'42"W 222.16', to a point located on the Northwesterly line of said Lot 2; thence Northeasterly on said Northwesterly line, N55°01'00"E 50.00'; to the North most Corner of said Lot 2; thence Southeasterly on the Northeasterly Line of said Lot 2, S34°53'43"E 222.21', to the Point of Beginning, said tract containing an area of 11,109.25 Square Feet, more or less.

1. Extent of Grant of Easement. The full and free right and liberty for Grantee, its tenants, employees, visitors, licensees, successors in interest and assigns, in common with all others having the like right at all times hereafter, for all purposes whatsoever connected with the use and enjoyment of Lot 102 for whatever purpose Lot 102 may be from time to time used and enjoyed, and to lawfully use, pass and repass through said easement area for all purposes whatsoever.

2. Warranty. Grantor warrants that it is lawfully seized of the easement premises described herein, and Grantor has legal power and authority to convey the easement granted herein.

3. Maintenance. Grantee shall be responsible for the proper maintenance and repair of the easement area at Grantee's cost and expense. No fence or other permanent structures will be constructed upon the easement area by either party.

4. **Taxes.** Grantee will pay the real estate taxes on the easement area, duly prorated based on the real estate taxes covering the land only for Lot 2.

5. Indemnity. Grantee shall indemnify and hold Grantor, its successors in interest and assigns, harmless of and from any and all claims or causes of action or liability arising out of the use of the easement area by Grantee, its successors or assigns.

6. Appurtenant Easement. This easement shall be permanent and perpetual, and shall be appurtenant to and run with Lot 2 and Lot 102, and every part of said easement area.

IN WITNESS WHEREOF, the parties have executed this Basement the day and year first above written.

CBCO PARTNERSHIP, a Nebraska General Partnership

By Charles Burns
General Partner

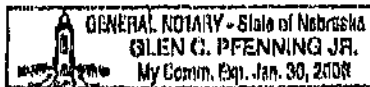
By Brian J. Burns
General Partner

THREE EAGLES OF LINCOLN, INC., a Nebraska Corporation

By Gary Buchanan
Gary Buchanan, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

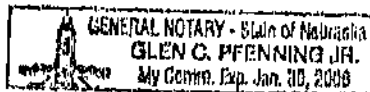
SUBSCRIBED AND SWORN to before me by Charles Burns and Brian Burns, the General Partners of CBCO Partnership, on behalf of said Partnership, this 15 day of August, 2002.



Glen C. Pfennig Jr.
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

SUBSCRIBED AND SWORN to before me by Gary Buchanan, as President of Three Eagles of Lincoln, Inc. and on behalf of said Corporation, this 15 day of August, 2002.



Glen C. Pfennig Jr.
Notary Public